

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

AARON L. JONES, SR.,

Plaintiff,

v.

MIKE DEWINE, *et al.*,

Defendants.

:

**Case No. 2:20-cv-03301
Judge Sarah D. Morrison
Magistrate Judge Elizabeth
Preston Deavers**

:

ORDER

Plaintiff Aaron L. Jones, Sr. is a state inmate under the supervision of the Ohio Department of Rehabilitation and Corrections (“ODRC”), proceeding without the assistance of counsel. (ECF No. 1.) Along with 20 fellow inmates, he initiated this putative class action in May 2020 against Defendants Governor Mike DeWine and ODRC regarding the conditions of confinement during the COVID-19 pandemic. (*Id.*)

A first amended complaint was filed (ECF No. 22), followed by a “Request for Removal from Civil Action” by certain plaintiffs to pursue their claims in a related case (ECF No. 24). Motion practice ensued. (ECF Nos. 26, 27, 28, 29.) The Magistrate Judge’s initial screen of the first amended complaint, which was adopted and affirmed by this Court, dismissed plaintiffs’ claims in their entirety but granted Mr. Jones leave to amend to develop his individual claims. (ECF Nos. 30, 37.) Mr. Jones filed a second amended complaint. (ECF No. 31.)

Before the Court today is the Magistrate Judge’s Report and Recommendation, which was issued after performing an initial screen of the second

amended complaint pursuant to 28 U.S.C. §§ 1915(e)(2), 1915A. (ECF No. 56.) The Magistrate Judge recommends that the Court dismiss Mr. Jones' claims in their entirety and close the case. (*Id.*) Mr. Jones objects. (Obj., ECF No. 57.)

If a party objects within the allotted time to a report and recommendation, the Court “shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1); *see also* Fed. R. Civ. P. 72(b). Upon review, the Court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1).

The Magistrate Judge found that Mr. Jones' second amended complaint is substantially identical to the first amended complaint and that his individual claims overlap with those previously dismissed by the Court. (ECF No. 56, PageID 469; *see* ECF Nos. 30, PageID 218; 37.) The Magistrate Judge also explains that Mr. Jones used his right to amend to clarify and repeat that he seeks compassionate release due to heart problems, breathing problems, and diabetes, but the Court has already held it is without authority to address this request as to Mr. Jones' state court sentence. (ECF Nos. 56, PageID 469–71; 41, PageID 381); *see also* *Wilson v. Williams*, 961 F.3d 829, 844 (6th Cir. 2020) (“only the sentencing court is authorized to reduce a term of imprisonment”).

The Court finds no error in the Magistrate Judge's reasoning or conclusions. The objections provide no basis for concluding otherwise. Mr. Jones repeats many of his complaint allegations in his objection. (*See* Obj.) He does not explain how his second amended complaint differs from the previously-dismissed first amended

complaint. (*Id.*) In fact, he concedes “That The Second Complaint Is Substantially Identical To The First Complaint. This Is Somewhat True.” (*Id.* PageID 475.)

Mr. Jones avers “Deliberate Indifference Is Included In THIS Complaint” (*id.* PageID 476), but points to no new allegations curing this Court’s previous finding that his pleading falls short of satisfying the subjective component of a deliberate indifference claim. (*Id.*; *see* ECF No. 30, PageID 212–13 (finding the first amended complaint failed to allege that “prison officials knew of and disregarded an excessive risk, thereby acting with deliberate indifference”).)

Finally, Mr. Jones again indicates he seeks compassionate release but as explained above, the Court has addressed this request in previous orders.¹ (Obj, PageID 476–77; ECF Nos. 41, PageID 381; 56, PageID 469–71); *see also Wilson*, 961 F.3d at 844.

Accordingly, Mr. Jones’ Objection (ECF No. 57) is **OVERRULED**. The Court **ADOPTS** and **AFFIRMS** the Magistrate Judge’s Report and Recommendation (ECF No. 56). The second amended complaint is **DISMISSED**. The Clerk is **DIRECTED** to **TERMINATE** this case from the docket of the United States District Court for the Southern District of Ohio.

IT IS SO ORDERED.

/s/ Sarah D. Morrison
SARAH D. MORRISON
UNITED STATES DISTRICT JUDGE

¹ Ohio Revised Code §§ 2920(A)(5) and (N)–(S) is the parallel state statute that provides a mechanism for judicial compassionate release.